Filed 11/24/20 In re A.K. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re A.K, a Person Coming Under the Juvenile Court Law.	B305483
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. W.K., Defendant and Appellant.	(Los Angeles County Super. Ct. No. 19CCJP07500)

APPEAL from order of the Superior Court of Los Angeles County, Emma Castro, Judge Pro Tempore. Affirmed.

Andre F. F. Toscano, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kim Nemoy, Assistant County Counsel, and Veronica Randazzo, Deputy County Counsel, for Plaintiff and Respondent.

W.K. appeals from a juvenile court order denying him presumed father status as to now four-year-old A.K. (the child), the biological daughter of H.J. (Mother) and E.L. (Father). At the time the child was born, Mother and W.K. were married, and Mother and the child lived with W.K. for at least some of the child's young life. In the dependency proceedings arising from Mother's substance abuse and Mother and W.K.'s domestic violence, both W.K. and Father sought presumed father status as to the child, which the court granted to Father only. W.K. identifies errors in the court's analysis of the two men's competing requests for parental status, an analysis governed by Family Code sections 7611 and 7612.[1] Namely, he argues that the court should have made express findings under section 7611 before proceeding to the section 7612 portion of the analysis, and that the court misunderstood the detriment standard applicable under section 7612, subdivision (c). We agree that the court erred, but disagree that these errors prejudiced W.K.

The court's written statement of decision included detailed factual findings regarding W.K.'s relationship with the child, the extent to which she lived with him or received financial support from him, and his motives in seeking presumed father status. These findings are amply supported by substantial evidence. Given these findings, it is not possible—let alone reasonably probable—that making express section 7611 findings and/or applying the correct section 7612 detriment standard would have led the court to reach a different conclusion regarding W.K.'s parental status. As such, the court's errors do not require reversal. Accordingly, we affirm.

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[1] Subsequent statutory references are to the Family Code, unless otherwise indicated.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Family Background*

Shortly before W.K. and Mother married in October 2015,[2] Mother had a sexual relationship with Father. In May 2016, Mother gave birth to the child. W.K. was present for the child's birth and signed a voluntary declaration of paternity. W.K.'s name appears on the child's birth certificate.

Father saw pictures of the child through social media and noticed a likeness between the child and his older daughter, but did not reach out to Mother, because she was married to W.K., and because W.K. and Mother had represented through social media that the child was theirs.

Several months after the child's birth, W.K. began to question whether the child was his biological child and took a paternity test, which confirmed he was not. The evidence in the record includes varying accounts of how W.K. reacted to this news. According to W.K., he "let [the] (paternity findings) go" and continued to treat the child as his own, although he did tell some family and friends about the test results. According to Mother and the child's teenage maternal half sisters,[3] W.K.'s relationship with the child deteriorated thereafter. Mother stated that W.K. "never was hands on with [the child] (changing diapers and feedings) but after the DNA test he was not present with her at all. He shut off all emotion and told [Mother] [she] would pay for the rest of [her] life."

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[2] At the time, Mother believed she had successfully divorced her previous husband, A.J., several years prior.

[3] Mother has two older daughters, P.J. and B.J. (the child's maternal half sisters), who lived with their father, A.J., Mother's ex-husband.

It is undisputed that W.K. has always introduced the child to friends and family as his daughter, and that, when the child began speaking, she called him "Daddy" or "Daddy [W.]"

B. *The Child's Living Situation*

There is conflicting evidence in the record regarding the child's living situation. According to W.K. and his older daughter, J.K.,[4] the child and Mother lived with W.K. and J.K. in W.K.'s home until Mother and W.K. separated sometime in 2018, although there were short periods of time when Mother would leave with the child and stay with her ex-husband, A.J. Also, according to W.K. and J.K., the child continued to live in W.K.'s home after his final separation from Mother. W.K. claimed he was often the sole caregiver during this time, as Mother would have episodes of binge drinking and be unable to care for the child.

According to Mother, A.J., and the child's maternal half sisters, there were significant periods of time during Mother's relationship with W.K. that Mother and the child lived with A.J. Mother and W.K. would have relationship problems or incidents of domestic violence, and Mother and the child would stay with A.J. for a month or more as a result. According to Mother, sometime in late 2018, Mother and the child began living full time with A.J.

According to Mother and A.J., W.K. took the child without Mother's consent for multiple months in March 2019, refused to tell Mother where the child was, and blocked Mother's communication with the child. Mother stated W.K. did this at other times as well, and would text her stating, "You will never see [the child] again."

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[4] J.K. is W.K.'s teenage daughter from a previous marriage and lived with W.K.

The child's maternal half sisters similarly told DCFS that W.K. "often" would take the child for weeks or months at a time and refuse to allow them any contact with the child. The child herself told DCFS that W.K. and Mother would "hide" her from each other.

According to W.K. and his older daughter J.K., the child continued living with them after Mother and W.K. separated at Mother's request, so that Mother could participate in substance abuse rehabilitation programs, or because Mother was not capable of caring for the child due to her drinking. Mother acknowledged that, at her request, W.K. did take care of the child on two occasions while Mother participated in 30-day rehabilitation programs, but characterized these as the only times W.K. has been the sole caretaker for the child with Mother's consent.

C. *W.K.'s Financial Support for the Child*

There are also conflicting accounts regarding the extent to which W.K. provided support for the child financially. According to Mother, W.K. helped provide for the child while Mother and the child were living in his home, but he did not provide any support when they were not living with him, and he denied Mother's repeated requests for financial support after their final separation in 2018. According to W.K. and his older daughter J.K., W.K. has consistently provided for the child, both financially and otherwise.

D. *W.K. and Mother's Divorce Proceedings*

In April 2019, W.K. filed for divorce from Mother. W.K. reported to DCFS that, in the divorce proceeding, he was seeking "temporary full custody of [the child] until . . . [M]other could prove she was sober." The record does not contain any documents from the divorce proceedings, although it appears DCFS requested them.

It was only in connection with these divorce proceedings that Mother and W.K. learned Mother's previous marriage to A.J. had never been legally dissolved, and thus that Mother and W.K.'s marriage may not be valid.

E. *Father's Involvement in the Child's Life*

There is conflicting evidence in the record regarding when Father learned the child was his biological child. At the latest around April 2018, Mother told Father he was likely the child's biological parent and that a paternity test had revealed W.K. was not. Father enthusiastically agreed to become involved in the child's life. Father told "[e]veryone [he] kn[e]w" the child was his child, and started regular visits with her. In 2019, Father began consistent full-weekend visits with the child in his home. Father gave Mother money to assist in supporting the child, and provided all of the child's necessities while she visited him. Around September 2019, the child began calling Father "Daddy [E.]"

According to Mother, W.K. would see pictures Father posted on social media regarding his time with the child and "retaliate by trying to intervene in their relationship."

F. *Paternity Proceedings in Family Court*

In October 2019, Father filed a paternity action in family court, naming Mother as the sole respondent, as well as a complaint for joinder of W.K. as a third party. Father sought not only to establish a parental relationship, but sole legal and physical custody of the child, with reasonable visits for Mother, as well as a DNA paternity test "so that [the] [c]ourt can enter a formal determination, that [he was] the father of [the child]."

G. *Section 300 Petition and Detention Hearing*

On October 31, 2019, the child and her maternal half sisters witnessed a violent altercation between Mother and W.K. when Mother and Father served W.K. with court papers.[5] This triggered the filing of a Welfare and Institutions Code section 300 petition seeking juvenile court jurisdiction over the child and her half sisters. The petition alleged that longstanding substance abuse by Mother and A.J., a history of domestic violence between Mother and A.J. and Mother and W.K., and the recent violent altercation involving Mother, A.J., and W.K. placed all three children at significant risk. The detention report revealed several prior inconclusive investigations regarding Mother and W.K., based on "reports of alcohol and cocaine use by [Mother and W.K.], domestic violence, court battles and alleged kidnapping."

At the November 2019 detention hearing, both Father and W.K. filed a "Statement Regarding Parentage" form indicating each believed himself to be the child's father. Father attached to his form a report of the results from a November 15, 2019 paternity test, reflecting a "99.99" percent probability that he is the child's biological father. The juvenile court deferred making a paternity finding for the child, ordered the parties to brief the paternity issue, and set a hearing on the child's paternity.

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[5] Based on this incident, both W.K. and Mother filed requests for restraining orders against each other, which both ultimately dropped.

The court detained the child from Mother, Father, and W.K., and ordered that she remain placed in a foster home. The court ordered monitored visits with the child for Mother, Father, and W.K., and released her half sisters to their father, A.J.

H. *Juvenile Court Hearing on Motions Regarding Presumed Father Status*

Both W.K. and Father filed motions seeking presumed father status as to the child. The juvenile court held a hearing on the motions over several days in January 2020. At the hearing, the court admitted into evidence W.K. and Mother's marriage certificate and the DCFS reports, including an extensive last minute information focused on the paternity issue. W.K., Father, Mother, J.K., and A.J. testified.

1. *The DCFS reports*

The DCFS reports admitted into evidence reported that when asked about both men, the child said of W.K., "[W.K.] is daddy," and of Father, he is "really nice." The reports contained the information outlined above, as well as the following additional information bearing on the child's relationships with W.K. and Father, respectively.

a. *Additional information regarding W.K.'s relationship with the child*

The reports described Mother and A.J.'s statements that W.K. used the child as a "pawn" to manipulate and "get at . . . [M]other" and as a "tool to punish [Mother] for [the child]'s paternity."

The reports also relayed statements by one of the child's maternal half sisters that W.K. was " 'fine' and 'normal' with [the child], but when [Mother] and [W.K.]'s relationship became

unstable, [the half sister] noticed a distinct difference in the care of [the child]." Namely, during the times the child was with W.K., she did not bathe and "[did] not eat that much." For example, when the child would return to Mother after W.K. "withheld" the child "for weeks," the child was " '[v]ery dirty and filthy. [The child] would come back and say [W.K.] wouldn't feed her and he didn't bathe her.' " On several occasions the child returned with food matted in her hair, severe knots in her hair, and appearing as if she had not changed clothes in days.

The child's maternal half sister believed the child " 'used to love [W.K.] and then it went downhill,' " and reported that when W.K. tried to take the child back with him after even a short visit, the child would " 'freak out' " and " 'grab on to [her half sisters] on [their] legs and cry,' " and that the child got very anxious when W.K. was mentioned.

DCFS reported W.K. participated in twice weekly phone visits with the child since the start of the dependency proceedings, and had visited in person with the child once. DCFS was not able to observe the visit, but the child's foster mother reported that the child " 'doesn't seem . . . receptive to [W.K.]," and that on one occasion the child "reacted very badly when the resource mother brought up 'Daddy [W.]' "

b. *Additional information regarding Father's relationship with the child*

Father has visited in person with the child approximately three to four times since the beginning of the dependency proceedings, in addition to phone visits twice a week. A DCFS social worker who monitored a visit with the child and Father reported that as soon as the child saw him, she screamed his name, was visibly excited, ran to him, and hugged him tightly. Father engaged in appropriate play and conversation with the child, and

the child was very affectionate with him. At the end of the visit, the child was tearful and asked why she could not leave with Father.

c. *DCFS assessment and recommendation*

The DCFS reports in evidence included DCFS's assessment that Mother and W.K. had kept Father from the child for much of her life, despite his interest in being involved, and that W.K. "use[s] the child . . . as a pawn in [his and Mother's] ongoing, painful attempts at cohabitation and relationship." According to DCFS, W.K.'s attachment to the child "appear[ed] to be one of control and a need to remain connected to . . . [M]other." DCFS noted that the child did "not present as having the attachment of a daughter to [W.K.]" DCFS described Father as having "a healthier friendship" with Mother, and recommended that Father be identified as the child's presumed father. It further recommended that it would be "in the best interest of the child . . . to leave behind the chaos of [two] 'fathers' fighting over her and to move forward making memories [with] her birth father. . . . [The child] has not had enough consistent time with [W.K.] to make it imperative that she remain in contact with him."

2. *Testimony*

Mother testified regarding W.K.'s involvement in the child's life and his relationship with the child in a manner generally consistent with her previous statements to DCFS and her version of events as outlined above. With respect to Father's involvement in the child's life, Mother testified that the two had a close relationship and had built a bond. Mother testified that she first introduced the child to Father after W.K. received the negative paternity test results, at which time Mother believed the child was about six months old. Mother testified Father started having regular and consistent visitation with the child in July 2019, and

that Father has supported the child financially and bought the child clothes and shoes.

W.K. testified to his involvement in the child's life and his relationship with the child in a manner consistent with his previous statements to DCFS and his version of events, as outlined above. In addition, although he acknowledged having received negative results in a paternity test when the child was an infant, he also testified that he only learned she was not his biological child years later, in connection with the dependency proceedings. He testified that he has always been involved in the child's care, having "burped her, fed her, clothed her" and attended all her medical appointments.

Father testified that he first met the child in November 2016 when she was about five months old, and that he had not noticed that his paternity suit declaration, which his attorney prepared, incorrectly stated he first met her in April 2018. Father stated he had visits with the child in 2016 and had visits with her in his home since 2017. He further testified that, as of 2019, he was having overnight visits with her in his home, and that he continued to have visits with her. Father testified that he wanted to be involved in the child's life and he believed he had a close bond with her.

3. *Court's oral ruling*

Father argued that he should be granted presumed father status based on his having held the child out as his child, taken her into his home, and developed a parental relationship with her, a basis for presumed father status under section 7611, subdivision (d). He did not argue any presumption of parenthood arose solely from his biological connection with the child. W.K. likewise argued for presumed father status based on section 7611,

subdivision (d), as well as on the basis that he believed he was married to Mother at the time of the child's birth, a basis for presumed fatherhood under section 7611, subdivision (b)(1). Mother and counsel for the child argued that the court should grant presumed father status only to Father and opposed granting both men such status.

The court first granted Father's motion, citing section 7611, subdivision (d), then denied W.K.'s motion, citing section 7612. The court indicated it would provide a written statement of decision as to its ruling on W.K.'s motion.

4. *Written statement of decision regarding paternity*

In its written decision on W.K.'s motion, the court made credibility determinations and specific factual findings that resolved the numerous conflicts in the evidence noted above. "The [c]ourt did not find [W.K.] to be an honest and credible witness," but found Mother, Father, and A.J. to be credible in providing relevant testimony.

Based on the testimony of these witnesses and the DCFS submissions in evidence, the court found W.K. had "provided minimal care and physical custody for [the child] throughout her life," and that she had "been in [W.K.]'s sole care and custody for a very short period of time throughout her life, perhaps a few months, at most[,]" and "reported[ly] . . . against . . . Mother's wishes." The court found that, during the many periods when Mother and W.K. were separated, he failed to provide for the child and denied Mother's requests for financial assistance.

The court further found that, "[b]ased on the entirety of the record before [it]," "[the child] and [W.K.] do not share an attached and bonded relationship," and there was "[no] evidence of a substantive parent-child relationship between [the child]

and [W.K.] that would provide her with an emotionally stable and nurturing father-daughter relationship." Rather, "the [c]ourt strongly believe[d] based on the evidence in this matter that [W.K.] is asserting [p]resumed [f]ather status to retaliate against" Mother, Father, and others. Further, "the [c]ourt believe[d] there would be intense conflict between [W.K.] and [Father] if both were granted [p]resumed [f]ather status and [the child] were to be co-parented by both with [Mother]," and that "the conflict and animosity between Mother and [W.K.] would [also] create severe emotional distress and trauma for [the child]." "By contrast, [Father] and [Mother] have worked cooperatively in co-parenting [the child] to ensure her emotional and physical needs are being met."

Based on this assessment of the evidence, the court concluded that having only two parents (that is, Father and Mother) would not be detrimental to the child, and that "it [would be] contrary to [the child]'s emotional and physical well-being to allow both [Father] and [W.K.] [p]resumed [f]ather status," and made an ultimate "finding of non-parentage as to [W.K.]" under section 7612, subdivision (c). The court further applied section 7612, subdivision (b) and concluded that "the competing presumptions in both petitioners' [m]otions . . . require the [c]ourt to find that [the child]'s continuing emotional and physical well-being weigh against granting [W.K.]'s [m]otion."

W.K. timely appealed from the juvenile court's paternity findings regarding the child.

I. *Jurisdiction/Disposition Hearing and Termination of Dependency Proceedings*

Shortly after the court issued its written ruling regarding W.K.'s nonparent status, it sustained a first amended Welfare and Institutions Code section 300 petition with interlineations, under

which Father was nonoffending, and all counts regarding W.K. were dismissed.

The court removed the child from Mother, granted Father sole physical custody of the child, and terminated jurisdiction over the child.

DISCUSSION

A. *Applicable Legal Framework Under Sections 7611 and 7612*

Sections 7611 and 7612 set forth the framework for a juvenile court to determine competing claims of, inter alia, two men seeking presumed father status. Section 7611 identifies several possible bases on which a man may qualify for presumed father status.[6] One such basis exists under section 7611, subdivision (b)(1) (section 7611(b)(1)), when "the presumed parent and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law" and the child is born during the attempted marriage. (§ 7611, subd. (b)(1); see also § 7611, subd. (b)(2).) Another such basis exists under under section 7611, subdivision (d) (section 7611(d)) when "[t]he presumed parent receives the child into [his] home and openly holds out the child as [his] natural child." (§ 7611, subd. (d).) Courts interpret section 7611(d) as further requiring "a 'fully developed parental relationship' with the child. [Citation.] It is not enough to demonstrate 'only a caretaking role and/or romantic involvement

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[6] "[A] presumption [of parentage] under Section 7611 is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence." (§ 7612, subd. (a).)

with a child's parent.' [Citation.] Rather, the presumed parent must demonstrate ' "a full commitment to his [or her] paternal responsibilities—emotional, financial, and otherwise." ' [Citation.]" (*In re Alexander P.* (2016) 4 Cal.App.5th 475, 485.)

If a court determines that "two or more presumptions arise under Section 7611 that conflict with each other"—for example, if a court determines that more than one man qualifies as a presumed father under section 7611—the court applies section 7612 to determine parentage. (§ 7612, subd. (b).) Section 7612 permits a juvenile court, under certain circumstances, to grant presumed father status to more than one man—that is, to recognize a total of three or more parents for a child. (§ 7612, subd. (c); see *In re M.R.* (2017) 7 Cal.App.5th 886, 899 ["In 2013 . . . the Legislature amended . . . section 7612 to permit the court to declare more than one presumed parent" under certain circumstances.].) Specifically, if the court finds that it would be detrimental to the child for the court *not* to recognize two presumed fathers—or, put differently, that cutting parental ties with one of the two potential presumed fathers would be detrimental—section 7612, subdivision (c) (section 7612(c)) permits the court to afford such status to both men. (See § 7612, subd. (c).) Courts have interpreted section 7612(c) as requiring "an existing parent-child relationship between the child and the putative third parent," the loss of which would create detriment, in order to justify finding multiple presumed fathers or mothers. (*In re Donovan L.* (2016) 244 Cal.App.4th 1075, 1091 (*Donovan L.*) (italics omitted), quoting Sen. Bill No. 274 (2013–2014 Reg. Sess.) § 1.)

If, after applying section 7612(c), the juvenile court concludes that having two presumed fathers would *not* be appropriate, "then [it] generally must weigh the competing presumptions of [the] two or more presumed fathers and determine which one should

be recognized as the child's presumed father." (*In re L.L.* (2017) 13 Cal.App.5th 1302, 1317, citing § 7612, subd. (b).) Section 7612, subdivision (b) (section 7612(b)) addresses such weighing, and instructs the court to afford presumed father status to the man whose claim to parentage is based on the "[section 7611] presumption that on the facts is founded on the weightier considerations of policy and logic." (§ 7612, subd. (b).) The juvenile court is "obliged to weigh all relevant factors—including biology—in determining which presumption was founded on [the] weightier considerations of policy and logic." (*In re Jesusa V.* (2004) 32 Cal.4th 588, 608), and " 'must at all times be guided by the principle that the goal of our paternity statutes is "the protection of the child's well-being." ' [Citations.] '[T]he trial court must in the end make a determination which gives the greatest weight to [the child's] well-being.' [Citations.]" (*V.S. v. M.L.* (2013) 222 Cal.App.4th 730, 740.)

B. *W.K. Has Not Identified Reversible Error*

W.K. argues the juvenile court misunderstood and incorrectly applied the analysis outlined above in two distinct ways. We address each in turn below.

1. *Lack of express findings regarding W.K. under section 7611*

First, W.K. argues that the juvenile court failed to expressly find whether W.K. qualified for presumed father status under section 7611, and that a court must expressly address section 7611 as to both would-be fathers before it can proceed to the section 7612 analysis. According to W.K., the court instead incorrectly determined W.K.'s parental status based solely on section 7612, and did not take into account that W.K. met the requirements of section 7611.

As a preliminary matter, we note that the juvenile court's statement of decision could be read as including an implicit finding under section 7611 that at least one presumption under section 7611 applied to W.K. The statement of decision concluded that "the competing presumptions in both petitioners' [m]otions . . . require the [c]ourt to find that [the child]'s continuing emotional and physical well-being weigh against granting [W.K.]'s [m]otion." Unless the court had found that at least one section 7611 presumption applied to W.K., there would have been no "competing presumptions" for the court to consider.

Nevertheless, several cases have held that a court must first make express findings under section 7611 before proceeding to section 7612 analysis. (See *In re L.L., supra,* 13 Cal.App.5th at p. 1318 ["[a]ccordingly, where there are conflicting claims of two or more presumed fathers, the juvenile court must make factual findings as to each claim and then determine which claim is entitled to greater weight under section 7612, subdivision (b)"]; *Craig L. v. Sandy S.* (2004) 125 Cal.App.4th 36, 52 (*Craig L.*) ["a court must make factual findings with respect to each presumption and only then weigh which presumption is entitled, in that case, to greater weight"]; see *In re M.Z.* (2016) 5 Cal.App.5th 53, 66 [In applying section 7612(c), a court "should initially determine whether or not a person seeking status as a third parent can establish a claim to parentage," as "[s]uch an existing parent-child relationship [under section 7612(c)] is necessary before determining if recognition of only two parents would be detrimental to the child."].) This the juvenile court did not do.

According to W.K., had the court made such express section 7611 findings, it would have found W.K. a presumed father under section 7611(b)(1), based on his marriage to Mother at the time of the child's birth, which marriage he and Mother believed

to be valid. We agree that the record conclusively establishes the applicability of this section 7611(b)(1) presumption.

W.K. further argues that the court would have found W.K. qualified for presumed father status under section 7611(d), because he received the child into his home, held her out as his child, cared for her for much of her young life, and developed a parental relationship with her. We disagree.

The court made several factual findings regarding W.K.'s relationship with the child and other factors relevant under section 7611(d). Section 7611(d) requires W.K. to have "demonstrate[d] ' "a full commitment to [parental] responsibilities—emotional, financial, and otherwise.' " [Citation.] 'The critical distinction is not the living situation but whether a parent-child relationship has been established. " '[T]he premise behind the category of presumed [parent] is that an individual . . . has demonstrated a commitment to the child and the child's welfare.' " ' " (*In re M.Z.*, *supra*, 5 Cal.App.5th at p. 63.) Here, "[b]ased on the entirety of the record before [it]," the court found "that [the child] and [W.K.] do not share an attached and bonded relationship," and that there was "[no] evidence of a substantive parent-child relationship between [the child] and [W.K.] that would provide her with an emotionally stable and nurturing father-daughter relationship." The court also found W.K. had not consistently provided for the child financially.[7] Given these factual

[7] Because the court found there to be no meaningful parental relationship or bond between the child and W.K., we need not consider how, if at all, it would affect a section 7611(d) analysis that some of the time W.K. claims to have taken the child into his home was potentially in the context of his withholding the child from Mother.

findings, which substantial evidence in the record supports, it seems highly unlikely the court would have found W.K. qualified for presumed father status under section 7611(d).

But even assuming the court would have found W.K. qualified for presumed father status under section 7611(d), in order for the court's failure to make express section 7611 findings—under section 7611(d), section 7611(b)(1), or both—to be reversible error, it must be " 'reasonably probable' " that, had the court made such findings, it would have reached a different ultimate result regarding W.K.'s parental status. (*In re D.P.* (2020) 44 Cal.App.5th 1058, 1068 [error is reversible "when the appellate court, after examining the entire case, is of the opinion that ' "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error" ' "]; see *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 800 [same].) This is not the case here.

Had the court made such section 7611 findings, the court would have moved on to the next step in the analysis: weighing any competing presumptions and assessing detriment under section 7612. The court has already done that. W.K. argues that, without any express findings regarding what section 7611 presumptions apply, the court's section 7612 analysis weighed the presumptions merely "in name, but not in substance." W.K. further argues that the court "did not even mention [W.K.]'s parentage claims in addressing section 7612(b)," and thus must not have considered facts relevant to his section 7611 arguments in its section 7612(b) analysis. But the court expressly stated that its analysis was based on "the entirety of the record" and "the totality of the circumstances." Nothing in the substance of the court's section 7612(b) analysis suggests the court excluded from consideration any evidence offered in connection with section 7611.

Moreover, in weighing presumptions pursuant to section 7612(b), the trial court "must in the end make a determination which gives the greatest weight to [the child's] well-being." (*Craig L., supra,* 125 Cal.App.4th at p. 53.) Assessing the effect a parental relationship with W.K. will have on the child's well-being necessarily depends, at least in part, on the same issues presented by W.K.'s section 7611 claims to presumed father status: The nature of the child and W.K.'s relationship, the amount of time the child spent living with W.K., their family structure and history, and W.K.'s overall involvement in the child's life. There is thus nothing to suggest that the court's failure to make express findings regarding W.K. under section 7611, or to expressly reference such findings in the section 7612(b) analysis, limited the court's analysis of those issues in any meaningful way. As such, it is not reasonably probable that the court's failure to make express section 7611 findings prevented a more favorable outcome for W.K. in the court's section 7612(b) analysis.

2. *Incorrect detriment analysis*

W.K. next argues that, in the court's section 7612(c) analysis, the court applied an incorrect interpretation of the detriment requirement, because the court assessed detriment to the child from *permitting* both men to have presumed father status, rather than detriment from *denying* one of those men parental status.

W.K. is correct that the plain language of section 7612(c) requires a juvenile court to assess detriment from *denying* presumed father status to either Father or W.K.—not from permitting both such status. (See § 7612, subd. (c) ["a court may find that more than two persons with a claim to parentage under this division are parents if the court finds that *recognizing only two parents would be detrimental to the child*"] (italics added);

In re L.L., *supra*, 13 Cal.App.5th at p. 1316 [juvenile court misinterpreted and misapplied section 7612(c) by analyzing whether it would be detrimental to child if second presumed father was added as a third parent].)

This error did not, however, prejudice W.K. First, although the court framed the section 7612(d) analysis as one examining whether "having more than two parents would be detrimental to the minor child" (boldface omitted), it concluded *both* that "it is contrary to [the child]'s emotional and physical well-being to allow both [Father] and [W.K.] [p]resumed [f]ather status," *and* that there would be "no detriment to [the child] *if she only has two parents*." (Italics added and capitalization omitted.) The court thus appears to have analyzed the record under both the correct section 7612(c) detriment standard and an incorrect detriment standard. Under both, the court concluded W.K. should not be deemed a third parent.

Moreover, given the court's detailed factual findings about the lack of any "attached and bonded relationship" between the child and W.K., it is not reasonably probable that the court would have found severing their relationship detrimental to the child in the manner section 7612(c) envisions. "[T]he Legislature intended amendments to section 7612 to be narrow in scope and to apply only in 'rare cases' in which a child 'truly has more than two parents' who are parents 'in every way.' [Citation.] In those rare cases, the Legislature sought to protect the child from the 'devastating psychological and emotional impact' that would result from '[s]eparating [the] child from a parent.' [Citation.] Accordingly, 'an appropriate action' for application of section 7612, subdivision (c) is one in which there is an *existing* parent-child relationship between the child and the putative third parent, such that 'recognizing only two parents would be detrimental to

the child.' [Citation.]" (*Donovan L.*, *supra*, 244 Cal.App.4th at pp. 1090–1091.) "In determining detriment to the child, the court shall consider all relevant factors, including, but not limited to, the harm of removing the child from a stable placement with a parent who has fulfilled the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time." (§ 7612, subd. (c).)

The court expressly found that W.K. has not played a caretaking role for any substantial period of time, that the child would be psychologically *harmed* if W.K. was permitted to co-parent her with Mother and Father, and that W.K. did not care for the child's physical needs (such as food and bathing) while in his care. Substantial evidence in the record amply supports these findings, and they foreclose the possibility that the court could conclude W.K. was the child's "parent[ ] 'in every way' " (*Donovan L, supra*, 244 Cal.App.4th at p. 1090, quoting Sen. Bill No. 274 (2013–2014 Reg. Sess.) § 1) or had offered the child a " 'stable, continuous' " and " 'successful, established custodial arrangement.' " (*Donovan L, supra*, at p. 1089, italics omitted.) It is thus not reasonably probable that the court's error in interpreting section 7612(c) prejudiced W.K.

W.K. urges that he was prejudiced by the court's error, because "the juvenile court did not properly consider [W.K.] had an existing relationship with [the child], and due to its misinterpretation of section 7612(c) . . . , the court did not consider all relevant factors in determining it was detrimental to [the child] not to have [W.K.] as her third parent." But nothing suggests the court ignored any evidence in the record, either as a result of its incorrect interpretation of section 7612(c) or for any other reason. Rather, it appears the court found much of the evidence to which W.K. cites either not credible, or unpersuasive on the ultimate

issues in light of the other evidence in the record. We must defer to the juvenile court on these points; as an appellate court, we "ha[ve] no power . . . to weigh the evidence; to consider the credibility of witnesses; or to resolve conflict in, or make inferences or deductions from the evidence." (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199 [an appellate court "review[s] a cold record and, unlike a trial court, ha[s] no opportunity to observe the appearance and demeanor of the witnesses"].)

Moreover, W.K.'s suggestion that W.K. had an "existing parental relationship with [the child]" is not even inconsistent with the court's ultimate conclusion that W.K. is not the type of third parent to the child that section 7612(c) permits. Section 7612(c) requires *more* than an existing relationship—it requires a "stable, continuous" relationship (*Donovan L, supra*, 244 Cal.App.4th at p. 1089 (italics omitted), quoting *Guardianship of L.V.* (2006) 136 Cal.App.4th 481, 491), one in which the man is a "parent[ ] 'in every way.' " (*Donovan L, supra*, at p. 1090, quoting Sen. Bill No. 274 (2013–2014 Reg. Sess.) § 1.) It is not possible that, on remand, the court would find such a relationship here, given the court's factual findings—findings based on "the entirety of the record" and "the totality of the circumstances"—that W.K. and the child "do not share an attached and bonded relationship," and that, in fact, maintaining a parental relationship with W.K. would be "contrary to [the child]'s emotional and physical well-being."

Finally, to the extent W.K.'s argument that the court ignored "substantial, undisputed evidence" supporting *different* factual findings can be understood as challenging the sufficiency of the evidence to support the findings the court did make, he misunderstands the nature of the substantial evidence standard of review applicable to such factual findings. (See *In re M.Z.*, *supra*, 5 Cal.App.5th at p. 64 ["[W]e review factual findings regarding

parentage under either section 7611 or section 7612 for substantial evidence."].) That credible evidence supporting a factual finding is contradicted by other evidence in the record, or that the evidence could also support a different finding, is irrelevant for the purposes of substantial evidence review. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393; *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378.) We conclude substantial evidence supports the court's underlying factual findings and, in light of these factual findings, the court's ultimate conclusion that W.K. should not be afforded presumed father status was correct. " 'We uphold judgments if they are correct for any reason, "regardless of the correctness of the grounds upon which the court reached its conclusion." [Citation.] "It is judicial action and not judicial reasoning which is the subject of review . . . ." ' [Citation.] We will not reverse for error unless it appears reasonably probable that, absent the error, [W.K.] would have obtained a more favorable result." (See *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 876.) The court's misunderstanding of section 7612(c) was not such an error.[8]

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[8] W.K. argues that " '[a] discretionary order that is based on the application of improper criteria or incorrect legal assumptions is not an exercise of informed discretion, and is subject to reversal even though there may be substantial evidence to support that order. [Citations.]' (*E.C. v. J.V.* (2012) 202 Cal.App.4th 1076, 1084, 1090, 1091; *Mark T. v. Jamie Z.* (2011) 194 Cal.App.4th 1115, 1124–1025.)" This is not a fair statement of the law or the cases W.K. cites in support. In the first of those cases, the record contained "undisputed" evidence that would support a different outcome, had the court applied the appropriate legal standard. (See *E.C. v. J.V.*, *supra*, at p. 1089; *see id.* at pp. 1089–1091 [court considered inappropriate factors based on incorrect understanding of the statute and record contained evidence to support a different result, had the correct statutory

DISPOSITION

The juvenile court's non-parentage finding as to W.K. is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

FEDERMAN, J.*

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factors been considered].) As outlined above, the opposite is true here. In the other case W.K. cites, the court's misinterpretation of the law caused it to "avoid[ ] addressing the very question raised by" the request below. (*Mark T. v. Jamie Z.*, *supra*, 194 Cal.App.4th at p. 1129 [court's factual findings assumed it could prevent parent from moving out of state, and the court thus did not consider what custody arrangement would be in the child's best interest if the parent moved].) This is not the case here.

* Judge of the San Luis Obispo County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.